

it becomes evident that to lay down the general rule that the schedule must give the name of the creditor and the city and street number of the residence of those living in the largest cities would, in a multitude of cases, destroy the beneficent effect of the Bankruptcy Act.

These schedules are often hurriedly prepared, long after the date of the transaction out of which the debt grew, and when books and papers, which might otherwise have furnished a fuller and more complete address, have been lost or destroyed. Bearing in mind the general purpose of the statute to relieve honest bankrupts; considering that the Act does not expressly require the street address to be stated or the residence to be given unless known; and giving proper legal effect to the Order of Discharge, we hold that a schedule listing the creditor's residence as Indianapolis is, at least, *prima facie* sufficient. In view of this conclusion the judgment of the Appellate Court of Indiana is reversed and the case remanded for further proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE DAY, with whom concurred MR. JUSTICE McKENNA, dissenting.

I am unable to agree with the conclusion just announced. It seems to me to establish a rule by which many creditors will find their debts paid by a discharge in bankruptcy when they have had no knowledge or means of knowing that such proceedings were pending, and are not able to participate in such dividends as are paid to creditors.

It is admitted in this record that Ferger, the creditor, had a provable claim against Kreitlein in the bankruptcy proceeding. After the institution of this suit, the defendant Kreitlein pleaded his discharge in bankruptcy, and the state court refused to permit it to avail as a defense, because it did not appear that Ferger's debt was properly

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scheduled, or that he had been given the notice which the Bankruptcy Act declares shall be given to creditors of the pendency of the proceedings. The fact that Ferger had no notice of the proceedings is not contested. In that situation, under the Act of 1898, in order to bar the claim sued upon, it was essential for the bankrupt to show that he had complied with the act, in so far as he could, by giving or attempting to give Ferger notice of the pendency of the proceedings.

Under the Bankruptcy Act of 1867, creditors who had provable claims were barred by the bankrupt's discharge, although such creditors' names were omitted from the schedules or so incorrectly given that they had no actual notice of the bankruptcy proceedings, unless the omission or incorrect statement was fraudulent or intentional. (See the cases under the former act, collected in Black on Bankruptcy, § 727.)

As this court pointed out in *Birkett v. Columbia Bank*, 195 U. S. 345, the Act of 1898 devolved upon the bankrupt certain duties, "all directed to the purpose of a full and unreserved exposition of his affairs, property and creditors." Under § 7, he is required to prepare, make oath to, and file in the court, within ten days, a schedule of his property containing, among other things, "a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to." These schedules were to be in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee. "To the neglect of this duty," this court declared in the *Birkett Case*, "the law attaches a punitive consequence," which is set forth in § 17, and provides that "a discharge in bankruptcy shall release a bankrupt of all of his provable debts, except such as . . . have not been duly scheduled in time for proof and allowance,

with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy. . . ." It follows from this decision that, if a discharge is to have the effect to cancel the debt of a creditor who had no notice of the proceedings, the burden is upon the bankrupt to show a compliance with the Act. The provisions of the Act (§ 21f) making the certified copy of the discharge evidence of the jurisdiction of the court, the regularity of the proceedings and the fact that the order was made, should be read in connection with the provisions of § 17, excepting from the benefit of a discharge claims which the bankrupt has failed to duly schedule.

To this effect are a number of well considered cases in the state courts. In *Columbia Bank v. Birkett*, 174 N. Y. 112 (affirmed in 195 U. S. 345) the court, speaking through Judge Gray, said: "While there may be some difficulty in the way of the statutory construction, I think the plaintiff's claim has never been discharged, as the result of the bankruptcy proceedings. In my opinion, there are features in the present Bankruptcy Act which differentiate it from preceding acts and which indicate a legislative intent that greater strictness shall prevail in notifying the creditor of the various proceedings in bankruptcy. It is provided that the voluntary bankrupt must file 'a list of his creditors, showing their residences, if known,' and that notices must be sent to the creditors at 'their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed . . . by the creditors.' While in the previous act of 1841 and 1867, substituted service of notices by publication was provided for, in the present act it is actual notice that is required to be given. The schedule of debts, which the bankrupt is to file with his petition, furnishes the basis for the notices which the referee, or the court, is to give thereafter to the creditors, and thus the bankrupt appears

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to be made responsible for the correctness of the list of his creditors. That he is to suffer, in the case of his failure to state the name of the creditor, to whom his debt is due, if known to him, seems to me very clear from the reading of Section 17 of the Act. That excepts from the release of the discharge all debts which 'have not been duly scheduled in time for proof and allowance, with the name of the creditor.' That is very emphatic language, and how is it possible to obviate its effect by the argument that the plaintiff still had time left, after the discharge was granted, to prove his claim? . . . I think it was intended that the decree discharging the voluntary bankrupt should be confined in its operations to the creditors who had been duly listed and who were enabled to receive the notices which the act provides for."

In *Parker v. Murphy*, 215 Massachusetts, 72, this question was discussed, and the court said:

"Section 17 of the bankruptcy act provides that a discharge in bankruptcy shall release the debtor from all provable debts 'except such as . . . have not been duly scheduled' . . . unless such creditor had notice or actual knowledge of the proceedings in bankruptcy." Claims are not duly scheduled unless the names of the debtor's 'creditors showing their residences, if known,' are on the list of creditors filed. Section 7, cl. 8. The burden of proving that he did all things required of him under the bankruptcy law to give notice to the respondent creditor of the bankruptcy proceedings or that the latter had actual knowledge of them rests upon the plaintiff [the bankrupt] in this case. *Wylie v. Marinofsky*, 201 Massachusetts, 583; *Wineman v. Fisher*, 135 Michigan, 604, 608.

"The requirement for duly scheduling the names and residences of creditors is a most important one. It is in compliance with the generally recognized principle that one shall not be barred of his claim without the oppor-

tunity of having his day in court. It is for the benefit of the creditors and in the interest of fair dealing with them and is to be construed in harmony with this purpose. It is essential in order that notices in the bankruptcy proceeding may be sent him. It has been construed with some strictness. *Birkett v. Columbia Bank*, 195 U. S. 345; *Custard v. Wigderson*, 130 Wisconsin, 412."

In *Custard v. Wigderson*, 130 Wisconsin, 412, the court said: "Under the bankruptcy law of 1867 this court held, in harmony with the general current of authority, that a debt is discharged even though not scheduled. . . . But it will be seen that under the act of 1867 debts not scheduled were not excepted from the operation of discharge, while under the bankruptcy act of 1898 they are. . . . This provision is a marked departure from former bankruptcy acts, and decisions, under such acts, to the effect that scheduling was not necessary in order to bring the debt within the order of discharge" are not pertinent. "The words of the present act, however, are plain and unambiguous, and there can be no doubt that they mean what they say; and, if so, unless the debt is duly scheduled in time for proof and allowance, or the creditor had notice or actual knowledge of the proceedings in bankruptcy, it is not affected by the discharge."

In *McKee v. Preble*, 138 N. Y. Supp. 915, the schedules had given the address as 212, 9th. Avenue, New York, which was the place of business. Plaintiff's residence was elsewhere, with the correct address given in the city directory, where the bankrupt might have discovered it with a slight effort. The creditor swore he received no notice. The discharge was held ineffective as against this creditor.

In *Cagliostro v. Indelle*, 17 A. B. R. 685, the residence, as stated in the schedules, was "Mulberry Street, New York City." Creditor's residence, in fact, was 141 Mulberry Street, where he had resided for fifteen years last past.

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This fact appeared in the directory, and could have easily been discovered. It was held that the bankrupt did not use due effort to ascertain the address of the creditor, and the discharge did not affect this debt, the court saying: "I am satisfied that the petitioner, when he made up the schedules, failed to use due efforts to learn the street number of the judgment creditor, and that it was owing to such failure on his part that the judgment creditor received no notice. Such failure deprives him of the right to a discharge of such judgment. *Columbia Bank v. Birkett*, 174 N. Y. 112, 9 Am. B. R. 481; *Sutherland v. Lasher*, 41 Misc. 249, 11 Am. B. R. 780, *affd.*, 87 App. Div. 633. It may be that, in the absence of other evidence, there is a presumption that the postal authorities would deliver a letter to the plaintiff addressed, simply, 'Mulberry Street,' without any addition of the street number; but such presumption cannot prevail as against the positive statement of the plaintiff that he never received such notice."

It seems to me that the same rule in scheduling creditors cannot be applied to those who reside in large cities, where it may be essential in order that the creditor receive notice that street and number shall be given, as is applied to creditors residing in small communities where the postal authorities may be presumed to know the residence of the creditor by a more general form of address.

If it is sufficient to give the name of the city without more, the bankrupt, when making out his schedules which are to be the basis of informing creditors of the proceedings, may have before him the list of his creditors, and the street and number of their addresses, but being only required to give the name and residence of the creditor, he may omit to state the street and number, although known.

It is true that in view of the efficiency of the postal service such notices may reach the creditor, and may inform him of the proceedings with the consequent opportunity to prove his claim; but, because of the omission of

street and number the notice may fail to reach the creditor, and the estate may be administered and divided without his knowledge or any opportunity to participate in the distribution. It seems to me that the only consistent conclusion in view of the provisions of the present Bankruptcy Act, requires that the consequences of such negligence of the bankrupt be visited upon him and not upon the innocent creditor. If the notice reaches the creditor, well and good; but if not, the loss should fall upon him upon whom the law has placed the burden of complying with the requirement to duly schedule the debt of each creditor, so far as known.

It is a question of due diligence in every case, with the burden of showing such diligence upon the bankrupt, and there is nothing in this case to show that Kreitlein did not know of Ferger's address in Indianapolis, nor is there a showing of diligence on his part to discover what it actually was if in fact it was unknown. In view of their former dealings it is fair to presume that Ferger's address was known to Kreitlein.

Obviously, the same rule may not apply to all places and of course the schedules showing street and number are only to be complied with so far as practicable. "Thus, failure to look in the city directory of a great city, both creditor and bankrupt being residents, is not due scheduling." 3 Remington on Bankruptcy, p. 2504.

"By far the most important schedule is that of creditors. Its purpose is three-fold: (a) to give the court information as to the persons entitled to notice, (b) to inform the trustee as to the claims against the estate and the considerations on which they rest, and (c) to an extent at least, to limit the effect of the bankrupt's discharge to parties to the proceedings. It follows that the requirements of the statute . . . should be strictly observed. . . . The names of creditors should be written with care. . . . Even greater care should be

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observed in addresses. Schedules are defective if they do not contain the addresses of creditors, stating street and number, in case the creditors reside in large cities, or unless the schedules show that after diligent effort no better addresses can be obtained. If the residence cannot be ascertained, that fact must be stated, and the proper practice requires that the bankrupt shall state what efforts he has made to ascertain the residence." Collier on Bankruptcy, 9th ed., p. 234. To the same effect is 1 Loveland on Bankruptcy, 4th ed. 374.

It seems to me that in this case there is an utter lack of that diligence to ascertain and state the residence of the creditor which is required to give the discharge the effect of barring this claim.

Indianapolis is a large city. The imperfectly addressed notice never reached Ferger. Moreover Kreitlein had probable knowledge of Ferger's true address or might have obtained it by the exercise of due diligence. In my opinion the judgment of the Indiana court should be affirmed.

MR. JUSTICE McKENNA concurs in this dissent.